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In re Application of: :
BOCKO, Mark, et al. :
U.S. Application No.: 10/565,704 :
PCT No.: PCT/US2003/023160 :
International Filing Date: 24 July 2003 :
Priority Date: None :
Dkt No.: A35672-PCT-USA (074424.0107) :
For: SYSTEM AND METHOD FOR :
IMAGE SENSING AND :
PROCESSING :

DECISION ON PETITION
(37 CFR 1.182)

This decision is issued in response to applicants' "Petition To Withdraw Holding Of Abandonment Under 37 CFR 1.181" filed 10 January 2008, treated herein under 37 CFR 1.182. Deposit Account No. 02-4377 will be charged the required \$400 petition fee.

BACKGROUND

On 24 July 2003, applicants filed international application PCT/US2003/023160. The international application did not claim an earlier priority date, and it designated the United States. The deadline for submission of the basic national fee was thirty months from the international filing date, i.e., 24 January 2006.

On 23 January 2006, applicants filed a Transmittal Letter requesting entry into the national stage in the United States accompanied by, among other materials, payment of the small entity basic national fee.

On 19 July 2006, the United States Designated/Elected Office (DO/EO/US) mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an executed oath or declaration in compliance with 37 CFR 1.497, the surcharge for filing the oath or declaration later than thirty months after the priority date, and additional claims fees were required.

On 07 December 2007, the DO/EO/US mailed a Notification Of Abandonment (Form PCT/DO/EO/909) indicating that the application was abandoned for failure to file a response to the Notification Of Missing Requirements.

On 10 January 2008, applicants filed the petition considered herein. The petition asserts that, on 07 August 2006, applicants filed a timely and proper response to the Notification Of

Missing Requirements, including an executed declaration and a check in payment of the required surcharge and claims fees, and that the holding of abandonment should therefore be withdrawn.

DISCUSSION

As noted above, the present petition asserts that a proper and timely response to the Notification Of Missing Requirements was filed herein on 09 August 2006. The petition includes a copy of these materials, including the executed declaration, a Transmittal Form (PTO/SB/21), a Fee Transmittal Form (PTO/SB/17), a copy of the Notification of Missing Requirements, a check in the amount of \$165, and a document entitled "Submission Of Missing Requirements" which itemizes these materials, as well as a return postcard confirming receipt of these materials in the USPTO on 09 August 2006.

However, the caption of the "Submission Of Missing Requirements" document included in the 09 August 2006 filing references a separate U.S. application. Specifically, the application number, applicant name, title, filing date, and docket number listed on this document do not correspond to the present application. A review of U.S. application 10/595,268, the application number listed by applicants on the "Submission Of Missing Requirements," reveals that the 09 August 2006 submission, including the executed declaration and \$165 fee payment, were placed in such application file and properly identified as having been filed on 09 August 2006.

Because the materials filed on 09 August 2006 were directed by applicants to a different application, a grantable petition under 37 CFR 1.182 is required before such materials can be treated as having been filed in the present application as a timely response to the Notification Of Missing Requirements mailed 19 July 2006, as necessary in order to avoid abandonment of the present application. Accordingly, the present petition is treated herein under 37 CFR 1.182.

The present petition authorizes a charge for required fees; based on this authorization, Deposit Account No. 02-4377 will be charged the petition fee required for a petition under 37 CFR 1.182. In addition, a review of the documents filed 09 August 2006 confirms that the proper application number was listed thereon (specifically on the Transmittal Form, Fee Transmittal Form, and on the copy of the Notification Of Missing Requirements included with such submission), as also required for a grantable petition. The payment of the petition fee and the inclusion of the correct application number on the filed documents, in combination with the statements in the present petition, satisfy the requirements for a grantable petition under 37 CFR 1.182. Accordingly, the materials filed 09 August 2006, including the executed declaration, will be moved into the present application file and treated as having been filed in the present application on 09 August 2006 as a timely response to the Notification of Missing Requirements mailed 19 July 2006.¹

¹ USPTO records indicate that the \$165 fee and surcharge payment submitted by applicants on 09 August 2006 and originally applied to application file 10/595,268 was subsequently refunded to applicant in December 2006. Accordingly, Deposit Account No. 02-4377 will be charged again for these required fees, which will now be properly applied to the present application, 10/565,704.

The Notification Of Abandonment (Form PCT/DO/EO/909) mailed 07 December 2007, based as it was on applicants' purported failure to file a response to the Notification of Missing Requirements, is appropriately withdrawn.

CONCLUSION

The petition under 37 CFR 1.182 is **GRANTED**.

The Notification Of Abandonment (Form PCT/DO/EO/909) mailed 07 December 2007 is hereby **VACATED**.

The materials filed on 09 August 2006 in response to the Notification of Missing Requirements and originally directed to U.S. application 10/595,268, including the executed declaration and \$165 fee and surcharge payment, will be treated as having been filed in the present application on 09 August 2006 as a timely response to the Notification of Missing Requirements.

Deposit Account No. 02-4377 will be charged the required \$400 petition fee, as well as the \$65 surcharge and the \$100 extra claims fee originally submitted on 09 August 2006, but subsequently refunded.

This application is being forwarded to the National Stage Processing Branch of the PCT Operations Division for further processing in accord with this decision. The date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) is 09 August 2006.



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